IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1252 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
RAJESH BHANWARLAL MANDEVARA & 2 - Respondent(s)

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Appearance :
MR AY KOGJE APP for Applicant,
MR JM PANCHAL WITH MR MITESH R AMIN for Respondents.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/05/2007

ORAL JUDGMENT

This application has been filed by the State seeking cancellation of bail granted to the respondents herein by the learned Additional Sessions Judge, Ahmedabad, by an order dated 13th October, 2006, passed in Criminal Misc. Application No.3291/2006.

2. Facts leading to the present application are as follows:

2.1. With respect to unnatural death of one Varshaben, a complaint came to be lodged by her father before the police authorities on 29th June, 2006. It would be necessary to take note of contents of this complaint at some length.

2.2. The complainant has stated *inter alia* that his daughter Varshaben was married to one Dilip Bhanwarlal Mandevra on 2nd February, 2006. The marriage took place at Jodhpur. As per the demand of the deceased and her father-in-law at the time of marriage, the complainant had given approximately 50 tollas of gold ornaments in dowry in addition to giving 5 kilograms of silver utensils and other household items. At that time his son-in-law had demanded a Skoda car in dowry which costs about Rs.12 lacs. On account of the high price, he had not given the car at that time. The father-in-law of the deceased was upset because of the refusal of the demand at which time the complainant assured that if in future need arises, he will fulfill this demand also.

The complainant further stated that on 12th February,

2006, his son-in-law had come to Jodhpur to take Varshaben along, at which time also he had given some more jewellery at which time also the son-in-law Dilip had repeated the demand for Scoda car. He took Varshaben with him to Ahmedabad on 16th February, 2006.

On 17th March, 2006, Varshaben came to Jodhpur and stayed with her parents till 2nd April, 2006. At that time she had disclosed that her mother-in-law, father-in-law and three brothers of her husband namely Rajesh, Sunil and Bharat (respondents herein) had told her that this time around when she returns to Ahmedabad she must bring the new car. Varshaben told her parents that on account of not giving the car, her husband beats her and her in-laws humiliate and taunt her. She further disclosed to her parents that her husband Dilip has extra marital relation with a daughter of the doctor residing in a flat in a nearby block. Varsha reasoned with her husband but he did not budge, upon which she also disclosed this to her in-laws and the brothers of her husband. They thereupon abused her and beat her and told her that she is not worth keeping in their house. The complainant reasoned with the in-laws of Varsha but they were not ready to listen to him.

On 14th and 15th June, 2006 Varshaben told to the complainant on telephone that due to not giving the car her mother-in-law, father-in-law and husband are harrasing her and beating her and she is afraid for her life. The complainant came to know that his daughter is pregnant and on account of the beating she has started bleeding.

Upon receiving this telephone message, he left for Ahmedabad on 17th June, 2006 and came on 18th June, 2006 in the morning by bus. Varshaben's condition at that time was bad. She informed him that all the in-laws together would kill her and get Dilip married to the daughter of the Doctor. Everyday the demand of the car is repeated and she is being beaten. The complainant thereupon spoke to the mother-in-law, father-in-law, husband of the deceased as well as the three brothers of the husband. Father-in-law told to the complainant that so far the car has not been given, mother-in-law and the husband also repeated the same demand. Varshaben told her father to please take her to Jodhpur upon which the complainant requested the in-laws of Varsha that let her go with the complainant to Jodhpur but they fatly refused. After some more pleadings with the family, the complainant left Ahmedabad on 19th June, 2006.

On 20th June, 2006 in the evening Varsha spoke to her mother on telephone and told her that despite pleadings of the complainant; the father-in-law, the mother-in-law and the brothers of the husband are not softening and she is afraid that she would be killed.

On 21st June, 2006 the complainant received a phone call in the 3.00 in the afternoon informing that Varsha's health is not good. That she is shifted to Rajasthan Hospital in an unconscious state and that, therefore, he should immediately rush to Ahmedabad. The complainant with his wife and other family members left for Ahmedabad by car.

When they reached within a distance of 50 kilometers

from Ahmedabad they were stopped by some of the members of the community mentioned in the complaint and were told that the girl has died, she cannot be brought back. If true details are given to the police their relations will be strained and it would have adverse effect on the other relations also which would not be good for them. Upon hearing this, wife of the complainant fainted. Complainant and other family members also lost their senses and started crying. After giving primary aid to his wife they proceeded further and reached Ahmedabad. They were told by Champalal, Babulal etc. how to give their statements. Upon reaching Ahmedabad, the in-laws of Varshaben did not permit them to talk to anybody.

The complainant reached Civil Hospital. Brother of the complainant met him there and told him that in-laws of Varshaben wanted the postmortem to be finished but he has got it delayed. On seeing the body of Varshaben, he found that there were several injuries on different parts of the body and her hands and legs were broken. Varsha's in-laws did not permit him to meet anybody and after sometime he was taken to the police station where his statement was recorded under pressure from the in-laws of Varshaben. At that time the complainant was in deep shock due to sudden death of his daughter.

Complainant wanted to take the dead body of Varshaben to Jodhpur but was prevailed upon. Varsha's father-in-law and the brothers of the husband threatened the complainant that if you take any legal steps, the relation of your brothers which are in their family (in-laws of Varsha) will suffer.

After going to Jodhpur he had doubts about the death of Varsha and relatives told him that only because he could not fulfill the demand of a car in dowry that she was killed and thrown out of the flat. Thus, in only 4-1/2 months of marriage on account of non-fulfillment of demand for giving a car the husband, mother-in-law, father-in-law and brothers of the husband killed her.

2.3. Pursuant to the said complaint, since the respondents herein apprehended arrest, they moved for anticipatory bail before the Sessions Court which came to be rejected sometime in July, 2007. The respondents thereupon surrendered to the police authorities and moved for regular bail before the learned Additional Sessions Judge on 12th September, 2006. This application was granted by the learned Judge by an order dated 13th September, 2006 as noted earlier.

2.4. In the said order, the learned Judge observed that from the materials on record, it is clear that the applicants (the present respondents) are brothers of the husband of the deceased. Two of these three brothers are married. Considering the circumstances of the case and looking to the social setup in cases of unnatural death of a newly married wife, mainly it is her husband who is responsible. In the present case, from the material gathered by the police this aspect becomes further clear. Additionally, the husband of the deceased had a love affair with another girl. Thus, these persons are not the main accused. They are persons having less connection with the offence. It is represented by the

prosecution that all the applicants have attempted to misguide and mislead the prosecution. However, the Court is of the opinion that the applicants had shown their willingness for lie-detection and brain mapping. Charge sheet is already filed and, therefore, there is no possibility of hindering the investigation. The learned Judge further observed that though the prosecution apprehends that the applicants would try to influence the witnesses, the applicants are residents of Ahmedabad having their business in Ahmedabad and most of the witnesses are residing in Rajasthan and are close relatives of the deceased. On these grounds the learned Judge overruled the objection of the State for granting bail on the ground of possibility of pressurizing the witnesses. The learned Judge opined that the accused are not required in the custody and would be available for trial.

2.5. It is, this order which is challenged in this application.

3. Learned APP Shri Kogje for the State submitted that the learned Judge committed a grave error in releasing the respondents herein on bail when there was sufficient evidence collected by the prosecution against them. It was submitted that the respondents herein had played an active role in torturing, threatening and demanding expensive gifts by way of dowry all through out her marriage life.

3.1. It is further submitted that the complainant has given details of the dowry demands, the nature of harrasement and the complaints of the deceased made to her parents during her personal visit to Jodhpur as well as on telephone. It is submitted that the prosecution has collected several

statements of the involvement of the respondents herein.

3.2. It is further submitted that the respondents have considerable clout in their community. From the fact that when the complainant when rushing to Ahmedabad upon hearing that his daughter is serious, was intercepted by other members of the community and was brain washed into not disclosing the truth to the police would demonstrate that the respondents would certainly attempt to pressurize and influence the witnesses. Additionally, he also pointed out that in the complaint itself, the complainant has marched the manner in which the present respondents along with other in-laws of his daughter had pressurized and threatened the complainant not to reveal the death or to take any action.

3.3. It is further submitted that from the statements made in the complaint as well as from the further evidence collected by the prosecution, there is sufficient material at this stage to involve the respondents in a very serious crime. The learned Judge wholly ignored the relevant factors and granted bail.

3.4. It is further submitted that on 21st June, 2006, the statements given by the complainant and his wife cannot be fatal to the prosecution since the statements were given under extreme pressure and that the complainant and his wife were under duress.

3.5. Learned APP Shri Kogje drew my attention to the provisions contained under Section 113 B of the Evidence Act and submitted that in the present case there would be a presumption of guilty of the accused.

4. On the other hand, learned advocate Shri U.M.Panchal appearing with Mitesh Amin for the respondents opposed the application. It was submitted that the complainant has given categorical statement on 26th June, 2006 before a high ranked police officer in which he had given a clean chit to the in-laws of his daughter. It was submitted that even the wife of the complainant in a separate statement dated 26th June, 2006, absolved all the accused persons including the respondents herein.

4.1. It is submitted that theory of dowry demand and the torture of the deceased due to non-fulfillment of certain demand is neither believable nor plausible. It is submitted that the whole complaint is an after thought.

4.2. Learned counsel further pointed out that deceased Varshaben and her husband had only in May, 2006 visited abroad on a vacation. Even as per the prosecution theory Varsha was pregnant. It is submitted that her pregnancy was not free from problems. She had to be taken to hospital for treatment and was suffering from acute stomach pain. She was advised bed rest and was asked to lay down with legs in a raised position. It is on account of these physical difficulties that she would have committed suicide.

4.3. It is further submitted that the conduct of the in-laws of the deceased also would demonstrate that they had no guilty mind. She was immediately shifted to a hospital for treatment but was unfortunately declared brought dead. A communication to the father of the deceased that his daughter is ill and serious is also a natural conduct since they did not

want to put the father under extreme mental stress during his journey from Jodhpur to Ahmedabad.

4.4. It is further submitted that when others the statements are made by same witnesses, in a criminal trial the statements made at the earliest of time particularly when such statements are favourable to the accused would carry considerable weight. Coupled with the fact that the complainant changed allegations after eight long days, it was submitted that the prosecution case is week.

4.5. It is further submitted that after being released on bail they are no allegations against the respondents of either having tempered with the evidence or pressurized the witnesses or in any other manner having mis-used their liberty.

4.6. It is submitted that there is nothing in the record to suggest that the respondents would not be available for trial. They are well established persons having regular business.

4.7. It is submitted that considering these aspects of the matter when the learned Judge has exercised her discretionary powers, this Court should not cancel the bail already granted.

4.7. It is submitted that conditions for cancellation of bail are vastly different from those applied while granting bail.

4.8. Reliance is placed on the decision of the learned Single Judge of this Court in the case of **Vohra Abdul Razak**

Fazalbhai v. State of Gujarat & Ors. reported in 2002 (3) GLR 2768, wherein the learned Judge made following observations:

> *"13. However, I make it clear that if the learned Judge had not granted bail in this case and if the accused had come before this Court, ten perhaps, this Court might not have released them on bail, but the consideration would be different when the matter comes up before this Court for cancellation. If the learned Judge had discretion and if it is exercised without any ulterior motive by the learned Judge in favour of the respondents-accused and if one ground is sufficient to sustain the order, then even if this Court is inclined to take different view in the matter, then also, this Court would not interfere with such discretionary order."*

4.9. Reliance is also placed on the decision of the Apex Court in the case of **Subhendu Mishra v. Subrat Kumar Mishra and Anr. reported in 2000 SCC (Cri.) 1508**, wherein the Apex Court relying on the earlier decision in case of **Dolat Ram v. State of Haryana reported in (1995) 1 SCC 349** set aside the order of the High Court cancelling the bail. Observations made in the case of Dolat Ram v. State of Haryana (supra) to the effect that cogent and overwhelming circumstances are necessary for cancellation of bail already granted were relied upon. In the said case, the Apex Court has also observed that bail once granted should not be

cancelled in a mechanical manner without considering that any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. The Apex Court had also cautioned that the grounds mentioned for cancellation of bail are illustrative and not exhaustive.

4.10. Reliance was also placed on an unreported decision of this Court in case of **Parsottam Manilal Patel v. Dwarkabhai Mohanbhai Patel and ors. reported in 1994 (1) GLH (U.J.) 7**. In the said decision, learned Single Judge of this Court found that the Additional Sessions Judge had granted bail considering all aspects of the matter and the material which was placed before him as also considering the age of the accused by imposing necessary conditions. In that view of the matter learned Judge refused to cancel the bail only on the ground that the accused are alleged to have committed a serious offence. In the said decision however, the learned Judge did not lay down any ratio of universal application.

5. Having heard learned advocates appearing for the parties, I find that as per the complaint and other materials, following salient features arise in this case. It may be noted that my observations are purely prima-facie in nature and are made for deciding this application for cancellation of bail and would have no bearing in the ultimate trial that may be conducted.

5.1. Varshaben at a young age got married to Dilipbhai on 2nd

February, 2006. As per the complaint at the time of the marriage itself the complainant had given huge dowry in the form of gold and silver ornaments and other household items, the in-laws however insisted that the complainant provide a car of the make of Scoda by way of dowry. The car is costing nearly Rs.12 lacs. The complainant put-off the demand by saying that in future need so arises he will consider.

5.2. Immediately after the marriage the daughter of the complainant was harassed and physically and mentally tortured for not having brought the car from her father's house. The daughter of the complainant often complained about her ill-treatment to her father and mother. According to her she was regularly beaten and abused and tortured by not only by her husband but by his parents and the brothers of the husband.

5.3. According to what Varsha represented to her parents her husband also had extramarital relation with another girl. This was also a cause of regular torture being meted out to her. When Varsha disclosed this to the parents and brothers of her husband , they instead started beating her. She complained about this to her father on phone on 14th and 15th June, 2006. Her father personally came to Ahmedabad on 18th June, 2006 and pleaded with her in-laws. Varsha disclosed to him that she is not safe and pleaded to him that she may be taken to Jodhpur. In-laws however did not permit the complainant to take Varsha with him. On 20th June, 2006 also Varsha phoned her mother and disclosed that she is in grave danger of being eliminated and disclosed that she is afraid that she would be killed. On 21st June, 2006, the complainant received a phone

call in the afternoon informing him that his daughter is seriously ill and is shifted to Rajasthan Hospital in an unconscious state. He immediately proceeded for Ahmedabad in a car with his wife and other family members. About 50 kilometers before Ahmedabad they were intercepted by some relatives of Varshaben and were told not to reveal true facts to police or else the relations would be sored and other relations would also spoil. Upon reaching Ahmedabad the complainant came to know that his daughter is dead. Her body carried several injuries all over. He was however prevented from giving correct statements to the police by the in-laws of Varsha including the present respondents. His wife was in delirious condition and had fainted when first told that her daughter is dead. It is according to the complainant that under these circumstances they gave their statements on 21st June, 2006.

5.4. The investigating agency carried out detailed investigation and recorded statements of not only of complainant and his wife but also of several other relatives. Many of these statements linked the respondents with the alleged offence. At least as per the material collected by the prosecution, it cannot be stated that no case is made out against the respondents or that the prosecution material does not disclose any offence having been committed by the respondents.

6. Under these circumstances, the question is whether the bail granted to the respondents can be continued.

7. It is undoubtedly true that considerations for

cancellation of bail are vastly different from those applied when this Court is taking up a case for grant of bail. It is also well settled that cogent and overwhelming circumstances are necessary for ordering cancellation of bail already granted. As stated by the Apex Court in the case of Dolat Ram v. State of Haryana (supra) broadly stated grounds for cancellation of bail would be "interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail." However, as stated in the said decision these grounds are illustrative not exhausted.

8. In case of **Puran v. Rambilas and Anr. reported in (2001) 6 SCC 338,** the Apex Court observed that though generally speaking the ground for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to te accused in any manner, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It was also the case wherein the accused where charged with having committed offences under Section 498 A and Section 304 B of the Indian Penal Code. The Apex

Court observed that it must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected. It was further observed that it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

9. In the case of **State of U.P. Through CBI v. Amarmani Tripathi reported in (2005) 8 SCC 21**, the Apex Court considered large number of previous decisions on the opine and opined that in an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437 of Cr.P.C, continue to be relevant. It is further observed that while a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a minimum examination to be satisfied to the existence or otherwise of a *prima facie* case is necessary.

10. It can thus be seen that though for cancellation of bail, supervening circumstances of factors emerging after the bail order has been passed are most relevant. It cannot be gainsaid that when the Sessions Court has granted bail totally ignoring the material on record and well established principles of governing the judicial discretion of granting bail and on wholly irrelevant consideration and passed a perverse

order, this Court would in appropriate case be unjustified, in cancelling the bail.

11. Reverting to the facts of this case, it may be recalled that the learned Judge granted bail being influenced by the fact that from the material on record and the social set up in such cases, it is the husband who is to be blamed the most for an unnatural death of a newly wedded wife. In facts of the present case, I find that the learned Judge was totally unjustified in coming to such a conclusion. Such presumption cannot be put in a straight jacket and culpability of a person or the degree of seriousness of the role played by the accused has to be judged from material available in each case separately. There cannot be a warrant to presume that in a social setup in case of unnatural death of a newly married life it is the husband alone who is to be blamed.

11.1. The learned Judge observed that as per the prosecution case the husband of the deceased had an extra marital relation to which also the present respondents had only a remote connection. The learned Judge also brushed aside the apprehension of the prosecution that these accused if enlarged on bail would attempt to influence the witnesses stating that the witnesses are residing in Jodhpur whereas the accused persons are stationed at Ahmedabad.

11.2. I find that the observations of the learned Judge were not borne out from the material on record. At all stages in the complaint and in the further statements the complainant and other witnesses have implicated the present respondents in joining the other family members in not only

making dowry demands but also pressurizing, torturing and threatening the deceased with dire consequences if the demand is not fulfilled. Upon the deceased approaching them with the complaint that the husband was having extra marital relationship, they joined other family members in torturing the deceased. Their involvement with the actual offence as per the prosecution at least cannot be treated as remote. It is not the case of the defence that any of these respondents are residing separately and, therefore, could have no role in the entire incident.

11.3. It is true that the complaint was filed eight days after the incident. It is also true that on 21st June, 2006 the complainant as well as his wife gave their statements to the police absolving the in-laws of their daughter. Could it however, be stated that the same would weaken the prosecution to such an extent that at this stage the Court can hold that prima-facie no case is made out against the respondents. The complainant has given detailed reasons for not having lodged the complaint earlier. These reasons include those of pressure from the accused and other relatives and the possibility of further strained relations in the families where some more another marriages have already taken place as also the extreme distress and stress under which the parents of the deceased were upon disclosure of sudden death of their young daughter.

12. The learned Judge completely ignored that admittedly only after 4-1/2 months of marriage a young lady died an unnatural death in her matrimonial home. The learned Judge also overruled the objection of the prosecution that the

respondents herein if released may attempt to influence the witnesses despite the statements of the complainant that even before they reached Ahmedabad they were intercepted and pressured by several persons not to give true facts to the police.

13. Considering all these aspects of the matter, I find that the bail granted by the learned Judge cannot be sustained. The same is, therefore, cancelled. It is once again clarified that all the observations made here-in-above are only for deciding the bail application and are made on the basis of materials collected by the prosecution which is yet to be tested through conduct of the trial. Any observations made here-in-above would, therefore, have no bearing on the ultimate trial. However, it is also absolutely essential to take note of the materials collected by the prosecution to judge the validity of the order passed by the learned Sessions Judge. Nothing stated here-in-above would suggest that the prosecution case is accepted as a gospel and it is only upon the completion of the trial that the veracity of such statements can be fully tested. However, for the purpose of the bail application, I found that the facts and circumstances arising did not permit the learned Judge to exercise the discretionary powers in favour of the accused. It is only because of this reason that I have discussed at some length the materials on record and examined in that background the observations of the learned Judge.

14. The learned advocate Shri Panchal requested that this order be stayed upto end of July, 2007 to enable the respondents to approach the Apex Court. The request can

only be partially accepted. This order shall be stayed till 31st May, 2007.

15. With there directions, the application is disposed of. Rule is made absolute accordingly.

[AKIL KURESHI, J.]

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